IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 8766 of 2007(R)

{O.S.NO.25/2004 OF THE PRINCIPAL SUB COURT,
PALAKKAD

.....

PETITIONER:

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1. S.T.MANCHEY GOWDER,

2. M.MURUKAN.

BOTH ARE RESIDING AT OLD PALAKKAD ROAD,
CHULLIMADA, PUDUSSERY AMSOM, PALAKKAD TALUK.

BY ADV. SRI.V.CHITAMBARESH

RESPONDENT:

S.N.GIDDAYA, RESIDING AT NO.20/25,
ALAMU NAGAR SATHI ROAD, COIMBATORE.

BY ADV. SRI.K.R.HARIN
SMT.A.S.SUVITHA
SRI.MAHADEVAN.K

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: TRUE COPY OF THE APPLICATION IN E.P.NO.143/2005 IN O.S.NO.25/2004 DATED 3.8.2005.

EXT.P2: TRUE COPY OF THE OBJECTION FILED IN E.P.NO.143/2005 IN O.S.NO.25/2004 DATED 15.3.2006.

EXT.P3: TRUE COPY OF THE STATEMENT FILED E.P.NO.143/2005 IN O.S.NO.25/2004 DATED 9.8.2006.

EXT.P4: TRUE COPY OF THE ORDER IN E.P.NO.143/2005 IN O.S.NO.25/2004 DATED 9.8.2006.

RESPONDENTS' EXHIBITS: NIL

//true copy//

P.S. To Judge

SK/-

M.N.KRISHNAN, J.

W.P.(C) No.8766 of 2007 R

Dated this the 8th day of June, 2007.

JUDGMENT

This writ petition is preferred against an order of the Executing Court in E.P.No.143/05 in O.S.No.25/04 of the Subordinate Judge's Court, Palakkad. The petition is one for realisation of the decree amount by detaining the judgment debtors in civil prison.

2. Learned counsel for the petitioners had taken me through the counter affidavit filed by the judgment debtors. There is an averment towards the end of paragraph 2 of the counter affidavit that the judgment debtors do not have sufficient means or property to discharge the decree debt.

3. When such a contention if raised, it is incumbent upon the decree holder to prove the means of the judgment debtors as well as the factum of their intentional negligence to pay off the decree debt. Unfortunately, the executing court has not considered that point at all and therefore, the order requires interference and therefore, it is set aside.

4. Learned counsel for the decree holder would submit that the judgment debtors have made some payment after decree.

It is a fact which he can urge before the executing court at the time of argument regarding the means of the judgment debtors.

5. Therefore, the order under challenge is set aside and the matter is remitted back to the executing court with a direction to the executing court to post the matter for considering the means of the judgment debtors, after affording equal opportunities to the decree holder as well as the judgment debtors. Parties are directed to appear before the court below on **09.07.2007.**

Writ petition is disposed of as above.

Sd/-
(M.N.KRISHNAN)
JUDGE

sk/

//true copy//